

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WILLIAM I. GILL,

Plaintiff,

v.

Case No. 04-70164

United States District Judge Paul D. Borman

PONTIAC POLICE OFFICERS
LOCRICCHIO (#304) and MAIN (#310),

Defendants.

ORDER DENYING PLAINTIFF'S MOTION FOR A CERTIFICATE OF APPEALABILITY

This matter is before the Court on Plaintiff's Motion for a Certificate of Appealability. (Dkt. No. 103.) Defendants have filed a response. (Dkt. No. 104.) For the reasons that follow, the Court DENIES Plaintiff's motion for a certificate of appealability.

In an Order dated July 9, 2008, this Court removed this action as a pending matter and dismissed the case without prejudice. (Dkt. No. 86.) In an Order dated August 29, 2011, this Court granted Defendants' motion to amend the Court's prior order of dismissal to be "with prejudice" due to the expiration of the statute of limitations on all of Plaintiff's claims against these Defendants. (Dkt. No. 101.) On September 15, 2011, Plaintiff filed the instant Motion for Certificate of Appealability. (Dkt. No. 103.) Because Plaintiff brought his claims under 42 U.S.C. § 1983, and not for habeas relief under 28 U.S.C. § 2254, Plaintiff does not require a certificate of appealability from this Court to pursue any rights of appeal he may have under the Federal Rules of Appellate Procedure. *See* 28 U.S.C. § 2253(c)(1); *Johnson v. CCA-Northeast Ohio Correctional Center*

Warden, 21 F. App'x. 330, 332 (6th Cir. 2001) ("Since this case is properly construed as brought under § 1983, and not under § 2254, Johnson does not require a certificate of appealability.") (citing 28 U.S.C. § 2253(c)(1) and *Bradshaw v. Story*, 86 F.3d 164, 166 (10th Cir.1996)); *Brown v. Matuzak*, No. 07-11312, 2009 WL 3390174, at *1 (E.D. Mich. Oct. 21, 2009) ("Because Plaintiff is appealing a dismissal of an action brought pursuant to § 1983, it is not necessary for him to obtain a Certificate of Appealability.") (citing *Johnson*, 21 F. App'x at 332).

Accordingly, the Court DENIES Plaintiff's motion for a certificate of appealability (Dkt. No. 103).

IT IS SO ORDERED.



PAUL D. BORMAN
UNITED STATES DISTRICT JUDGE

Dated:

9-23-11